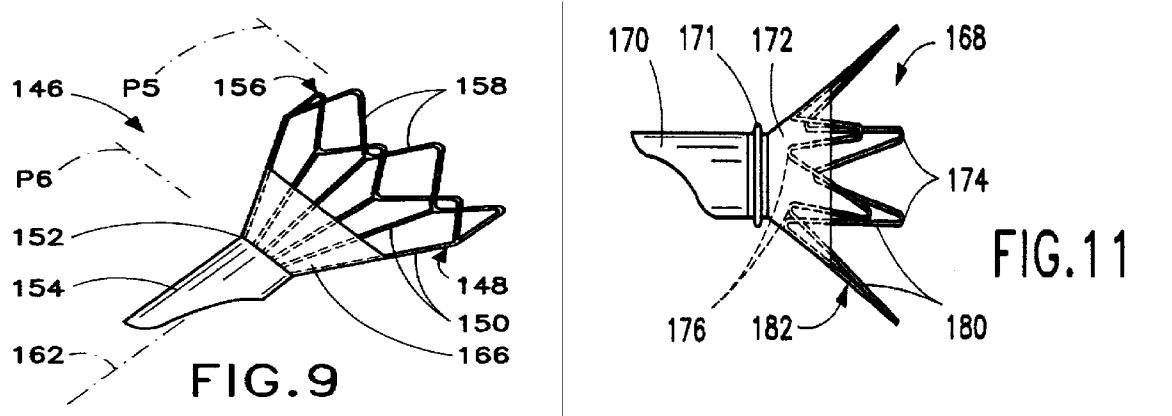


REMARKS

This Amendment is made in response to the final Office Action dated November 30, 2007. Claims 94-111 were pending in the application. New claims 112-114 are being presented for consideration. Favorable reconsideration is respectfully requested.

Claims 94-111 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,152,946 to Broome et al. (the "Broome patent") in view of U.S. Patent No. 5,800,457 to Gelbfish (the "Gelbfish patent"). Applicants strongly disagree with the Examiner characterization of the Gelbfish patent since this patent merely discloses a frame wire component 156 formed in a zig-zag pattern (Figure 10), not a filter element **made from a filter membrane** as recited in claims 94-111. The presently defined invention of claims 94-111 is specifically directed to the membrane portion of the embolic protection device which captures the embolic debris released in the body vessel. The position taken by the Examiner, namely, that "Gelbfish teaches an embolic filter with an edge of a sinusoidal configuration with valleys and peaks of different depths" only relates to the wire frame that supports the "web or film 166" or "membrane 172." The web 166 and membrane 172 in the Gelbfish patent are all shown as components having a straight leading edge. Figures 9 and 11 of the Gelbfish patent are reproduced below:



All of the webs or membranes disclosed in the Gelbfish patent have straight edges which are clearly shown in these figures above. Moreover, the Gelbfish does not teach that the

web or membrane can be formed with the wire pattern shown in Figure 10. Rather, the Gelbfish patent states the following at column 11, lines 64-66:

Filter body 148 is provided with a web or film 166 which renders the filter body liquid impermeable at least at its downstream side. Web or film 166 could be made long enough to cover or envelope prongs 150 and zig-zag element 156.

Therefore, the Gelbfish patent does not teach a filter membrane or web that has an edge configured in the shape shown in Figure 9. Rather, the web or membrane is simply extended upward to cover the frame wire as is depicted in Figure 11 above.

Moreover, the web or membrane of the Gelbfish patent fails to disclose a plurality of openings adapted to allow blood to flow therethrough while capturing embolic debris. Rather, a large single opening, adjacent to this continuous web or film 166 and membrane 172, is connected to a debris removal instrument and used to draw fluid and collected material out of the patient utilizing suction. The web or film 166 and membrane 172 of the Gelbfish device lack any type of perfusion openings. In fact, the Gelbfish patent actually teaches away from the use of perfusions openings in the web or film 166 and membrane 172 since the web or membrane is designed to enhance "the transmission of suction forces during a debris removal operation" (see column 11, lines 66-67 of the Gelbfish patent). Therefore, there are no openings in this "web or film 166" and "membrane 172" since this particular component is designed to remain liquid impermeable to enhance the transmission of suction forces. Openings in this web or membrane would inhibit the development of such suction forces. Accordingly, the Gelbfish patent fails to disclose the filter element of the present claims.

Applicants submit that the Broome patent fails to disclose the structure of the pending claims as is admitted by the Examiner in paragraph 2 of the final Office Action. Accordingly, the combination of the Broome patent with the Gelbfish patent fails to achieve the structure of the pending claims. Applicants respectfully request the Examiner to withdraw the obviousness rejections against claims 94-111.

New claims 112-114 are patentably distinct from the cited art for the same reasons stated above. Allowance of these new claims is respectfully requested.

In view of the foregoing, it is respectfully urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above amendments and remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Please charge any fees payable in connection with this response to Deposit Account No. 06-2425.

Respectfully submitted,

FULWIDER PATTON LLP

By: /Thomas H. Majcher/
Thomas H. Majcher, Reg. No. 31,119

THM:lm

220634.1